

FORTY-FIFTH DAY.

Senate Chamber,
Austin, Texas.
March 18, 1931.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Lieutenant Governor E. Witt.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Parr.
Berkeley.	Parrish.
Cousins.	Patton.
Cunningham.	Poage.
DeBerry.	Pollard.
Gainer.	Purl.
Greer.	Rawlings.
Hardin.	Russek.
Hopkins.	Small.
Hornsby.	Thomason.
Loy.	Williamson.
Martin.	Woodruff.
Moore.	Woodul.
Neal.	Woodward.
Oneal.	

Absent-Excused.

Holbrook. Stevenson.

Prayer by the Chaplin.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

Petitions and Memorials.

(See Appendix.)

Committee Reports.

(See Appendix.)

Bills and Resolutions.

By an affirmative vote of four-fifths of the membership of the Senate, the constitutional rule relating to the introduction of bills during the last 90 days of the session was suspended and consent was granted to introduce the following bill:

By Senator Purl:

S. B. No. 561, A bill to be entitled "An Act to amend Art. 4680 of the Revised Civil Statutes of 1925, providing for the appointment of a Deputy Life Insurance Commissioner by the Life Insurance Commissioner and such clerks as may be required; providing that Deputy Commissioner or clerks may be removed at the will

of the Commissioner; providing that the Deputy Life Insurance Commissioner shall possess all the powers and perform all the duties attached by law to the office of Life Insurance Commissioner during the necessary absence of the Commissioner or his inability to act; providing that the Commissioner shall be responsible for the acts of the Deputy Life Insurance Commissioner, and that the Deputy Life Insurance Commissioner shall take the oath required of the Life Insurance Commissioner; and providing the Life Insurance Commissioner may require such Deputy Life Insurance Commissioner or any clerk to enter into bond with security payable to said Life Insurance Commissioner, for the faithful performance of their duties."

Read and referred to Committee on Insurance.

By Senator Woodul:

S. B. No. 562, A bill to be entitled "An Act authorizing the creation of cemetery corporations for profit; permitting such corporations to create and establish funds for perpetual care and maintenance of such cemeteries; exempting such corporations from the provision of Title 26 Revised Civil Statutes, 1925 under certain circumstances and declaring an emergency."

Read and referred to Committee on Civil Jurisprudence.

Senators Excused.

On motion of Senator Woodul, Senators Holbrook and Stevenson were excused for the day on account of illness.

Messages From the House.

The Chair recognized the Doorkeeper, who introduced a messenger from the House with the following messages:

Hall of the House of Representatives,
Austin, Texas, March 18, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has granted the request of the Senate for the appointment of the Conference Committee to consider the differences between the two Houses on Senate Bill No. 111. The follow-

ing are conferees on the part of the House:

DeWolfe, Petsch, Stevenson, Sanders and Gilbert.

Respectfully submitted,

LOUISE SNOW PHINNEY.

Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, March 18, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following resolution:

H. C. R. No. 40, Requesting Highway Commissioners to request maintenance engineers to prevent Johnson Grass from maturing on road right-of-ways in this State.

Respectfully submitted,

LOUISE SNOW PHINNEY.

Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, March 18, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bills:

H. B. No. 370, A bill to be entitled "An Act to authorize any drainage district heretofore created or which may be hereafter created under the provisions of Chapter 7, Title 128, of the Revised Civil Statutes, 1925, and which, at the time of its creation, has become a conservation and reclamation district under the provisions of Chapter 8, Title 128 aforesaid, or which may, after its creation pursuant to law now or hereafter in force, become such conservation and reclamation district, to levy all taxes of such district on a benefit basis; that is to say, on an equal and uniform basis or rate on each acre of land within said district, instead of an ad valorem basis as now provided by law, to provide the method for the determination thereof, to repeal all laws in conflict herewith, and declaring an emergency."

H. B. No. 463, A bill to be entitled "An Act to authorize the Commissioner of the General Land Office to accept and award all applications for the repurchase of public school land in Dallam county forfeited and reappraised under Chapter 94, an Act approved March 19, 1925, and as amended by Chapter 25, an Act approved October 27, 1926, for which applications or the first payment

therefor were filed in the Land Office after the expiration of the time allowed by law for the filing thereof but for which applications and the first payment were so filed; such acceptance and award to be subject to existing rights of any third party who may have filed oil and gas applications thereon, and declaring an emergency."

H. B. No. 474, A bill to be entitled "An Act to validate and confirm the title to settlers' claims or preemption surveys to the preemptors or their assignees in all cases where proof of three years' occupancy from the date of filing of the application cannot be made but use and occupancy for a period of twenty-five years prior to the passage of this Act can be shown, and to require the issuance of patents, and to declare an emergency."

H. B. No. 847, A bill to be entitled "An Act to authorize the Commissioner of the General Land Office to accept and award all applications for repurchase of public school land situated in Brewster county and Loving county, Texas, subject to forfeiture and reappraisement on date of passage of Chapter 94, an Act approved October 27, 1926, for which applications or the first payment therefor were filed in the Land Office after the expiration of the time allowed by law for the filing thereof but for which applications and the first payment were so filed, etc., and declaring an emergency."

H. B. No. 6, A bill to be entitled "An Act further regulating the practice of medicine within this State, requiring the payment of annual registration fee by all persons lawfully qualified and engaged in the practice of medicine, and conferring certain powers on the Texas State Board of Medical Examiners, etc., and declaring an emergency."

Respectfully submitted.

LOUISE SNOW PHINNEY.

Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, March 18, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has given unanimous consent to correct the Conference Committee Report on H. B. No. 398, relative to the Comptroller's Department by adding after the word "taxes" the following:

"And special audits"

The House adopted the Conference Committee report on H. B. No. 398 by a vote of 104 yeas and 15 nays.

Respectfully submitted,

LOUISE SNOW PHINNEY.

Chief Clerk, House of Representatives.

Senate Concurrent Resolution No. 23.

Senator Pollard sent up the following resolution:

WHEREAS. On February 22, and on March 1, A. D. 1931, a meeting was held in Fort Worth, Texas, by Governor Murray of Oklahoma to study conservation laws affecting oil, gas and other minerals; and,

WHEREAS, On the 9th day of March, A. D. 1931, at Texarkana, Texas, a similar meeting was held with representatives of the Governors of the States of Oklahoma, Texas, California, Arkansas, Louisiana, Kansas, and Wyoming, in which the oil conservation laws of the various States affected were discussed and in said meeting, the following parties designated themselves a permanent committee to make recommendations concerning laws affecting the oil, gas and mineral industry in the States above mentioned, and also to provide proration recommendations in the various oil fields in said States; said committee being composed of the following members, to-wit: Cicero I. Murray, chairman, Oklahoma City, Oklahoma; W. H. Cooley, Bakersfield, California; Mark D. Mitchell, Independence, Kansas; Carl M. Cox, Cheyenne, Wyoming; W. Scott Heywood, Jennings, Louisiana; T. H. Barton, El Dorado, Arkansas; and Robert R. Penn, Dallas, Texas; and,

WHEREAS, The members of the Railroad Commission of the State of Texas and the members of the Legislature of the State of Texas, which two bodies are expressly designated or empowered to provide laws and enforce same affecting oil, gas and minerals, were not represented at said meeting, and the Legislature and the Railroad Commission should be informed of any and all such meetings in order that they may act with full knowledge of same before enacting legislation promulgating rules affecting the oil industry.

NOW, THEREFORE, BE IT RESOLVED, By the Senate of Texas,

and the House of Representatives concurring, that a committee entitled a "Committee to Study Oil, Gas and Minerals" be, and the same is, hereby created, consisting of seven members composed of the Governor of the State of Texas, the chairman of the Railroad Commission, and two members of the Senate of Texas appointed by the Lieutenant Governor, and three members of the House of Representatives appointed by the Speaker of the House of Representatives; that this committee be, and the same is, hereby authorized to meet with similar committees from the States of Oklahoma, California, Arkansas, Louisiana, Kansas, and Wyoming, at such times and at such places as the committee may desire; that the expenses of the members of said committee be paid out of the contingent fund of the Forty-second Legislature of Texas; that said committee and the various committees from the other states shall meet and discuss the laws and regulations affecting the oil, gas and minerals of said states, and shall recommend back to the various Legislatures a uniform code affecting the oil, gas, and mineral industry of said states.

POLLARD.

PARRISH.

The resolution was read.

Senator Woodward moved to refer the resolution to the Committee on State Affairs.

Senator Pollard received consent to send up the following amendment to be read but not acted upon until the pending motion was disposed of:

Amend Senate Concurrent Resolution No. 23 by adding after the words, "Forty-second Legislature of Texas," the following: "That the Legislatures of the various states affected, the chairman of the commissions of said states affecting oil, gas and minerals, and the Governors of each of said States, be invited to meet with said committee in the City of Austin, Texas, at a date as early as possible to study and consider all oil, gas and mining laws of the various states."

POLLARD.

The amendment was read.

Senator Purl sent up the following amendment to be read but not

acted upon until the pending motion was disposed of:

Amend Resolution by adding to it the following: "The Attorney General of Texas shall also be a member of this committee."

PURL.

The amendment was read.

The motion to refer prevailed.

S. C. R. No. 25.

Senator Hornsby sent up the following resolution:

BE IT RESOLVED, By the State Senate and the House of Representatives concurring:

That the Honorable Harry F. Byrd of Virginia, who formerly served with great distinction and ability as Governor of that State, whose father was born in Austin, Texas, and whose great-grand-father, Jones Rivers, was a distinguished Texas lawyer, be invited to address the Legislature of Texas during its present session, at such time as may suit his convenience; and that the President of the Senate and the Speaker of the House of Representatives jointly advise Governor Byrd of this invitation.

HORNSBY.

Read and adopted unanimously.

House Bills Referred.

H. B. No. 6, referred to Committee on State Affairs.

H. B. No. 474, referred to Committee on Public Land and Land Office.

H. B. No. 463, referred to Committee on Public Land and Land Office.

H. B. No. 370, referred to Committee on Mining, Irrigation and Drainage.

H. B. No. 847, referred to Committee on Public Land and Land Office.

H. C. R. No. 40, referred to Committee on State Highways and Motor Traffic.

Free Conference Report.

Senator Beck called up from the table the Free Conference Committee report on H. B. No. 398.

Senator Moore sent up the following amended motion as a substitute for his original motion.

Mr. President: I want to amend my motion on page 619 of the Senate Journal as follows:

I move that the Conference report on H. B. No. 398 be rejected and returned to the committee for further consideration.

MOORE.

The amended motion was lost by the following vote:

Yeas—5.

Hardin.	Poage.
Loy.	Purl.
Moore.	

Nays—22.

Beck.	Parr.
Berkeley.	Parrish.
Cunningham.	Patton.
DeBerry.	Rawlings.
Gainer.	Russek.
Greer.	Small.
Hopkins.	Thomason.
Hornsby.	Williamson.
Martin.	Woodruff.
Neal.	Woodul.
Oneal.	Woodward.

Absent.

Cousins.	Pollard.
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Absent-Excused.

Holbrook.	Stevenson.
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The report was adopted by the following vote:

Yeas—28.

Beck.	Parr.
Berkeley.	Parrish.
Cunningham.	Patton.
DeBerry.	Poage.
Gainer.	Pollard.
Greer.	Purl.
Hardin.	Rawlings.
Hopkins.	Russek.
Hornsby.	Small.
Loy.	Thomason.
Martin.	Williamson.
Moore.	Woodruff.
Neal.	Woodul.
Oneal.	Woodward.

Absent.

Cousins.

Absent-Excused.

Holbrook.	Stevenson.
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Recess.

On motion of Senator Woodruff, the Senate, at 12 o'clock noon, recessed until 3 o'clock p. m.

After Recess.

The Senate met at 3 o'clock p. m., pursuant to recess and was called to order by Senator Berkeley.

House Concurrent Resolution No. 35.

The Chair laid before the Senate the following resolution:

H. C. R. No. 35, Relating to concession for Oscar Raines in the Land Office Building.

The committee report was adopted. Read second time.

Senator Loy sent up the following amendment:

Amend H. C. R. No. 35 by striking out the word "authorized," and insert in lieu thereof the word "requested."

Read and adopted.

Senator Purl sent up the following substitute for the resolution:

Substitute for House Concurrent Resolution No. 35, by Gilbert and others.

WHEREAS, It has been brought to the attention of the House and Senate that there is no place provided for employees of the Land Office Building to purchase tobacco, and soft drinks, and

WHEREAS, There was formerly a stand of this kind in this building, and

WHEREAS, The individual who operated this stand before has made it known that he desires to re-install his place of business provided it meets with the approval of the House and Senate, and

WHEREAS, The Land Office Building is a State building and stands of this nature cannot be installed without the approval of the members of the House and Senate, and

WHEREAS, The members of the House and Senate cannot intelligently vote on this important matter unless they know:

FIRST. Whether or not there is a need for it.

SECOND. Whether or not the heads of the departments are of the opinion that such a stand would add to the efficiency and comfort of the employees.

THIRD. Whether or not the installation of such stand would increase the fire hazard.

FOURTH. Whether or not such a stand would encourage rodents and insects to infest this building.

FIFTH. Whether or not there should be a charge made for this concession.

THEREFORE, BE IT RESOLVED By the Senate of Texas, the House concurring, that the President of the Senate and the Speaker of the House appoint one member of each body to investigate this situation in conjunction with the State Board of Control, and

BE IT FURTHER RESOLVED, That such members appointed report back in writing to both bodies of the 42nd Legislature within fifteen days their findings and their recommendations.

PURL.

The substitute was read.

Senator Loy moved to table the substitute.

Senator Moore moved the previous question on the motion to table the substitute and on the resolution.

The previous question was ordered.

The motion to table the substitute prevailed by the following vote:

Yeas—18.

Cousins.	Parr.
Cunningham.	Parrish.
Gainer.	Patton.
Greer.	Poage.
Hopkins.	Pollard.
Hornsby.	Russek.
Loy.	Small.
Martin.	Thomason.
Oneal.	Woodul.

Nays—10.

Beck.	Purl.
Berkeley.	Rawlings.
DeBerry.	Williamson.
Hardin.	Woodruff.
Moore.	Woodward.

Present—Not Voting.

Neal.

Absent-Excused.

Holbrook. Stevenson.

The resolution was adopted by the following vote:

Yeas—16.

Cousins.	Hornsby.
Cunningham.	Loy.
Gainer.	Neal.
Greer.	Oneal.

Parr.	Russek.
Parrish.	Small.
Patton.	Thomason.
Poage.	Woodul.

Nays—12.

Beck.	Pollard.
Berkeley.	Purl.
DeBerry.	Rawlings.
Hardin.	Williamson.
Hopkins.	Woodruff.
Moore.	Woodward.

Present—Not Voting.

Martin.

Absent-Excused.

Holbrook. Stevenson.

Bills Signed.

The Chair, Lieutenant Governor Edgar E. Witt, gave notice of signing, and did sign in the presence of the Senate, after their captions had been read, the following bills:

H. B. No. 398.
H. B. No. 703.
H. B. No. 486.

House Bill No. 486.

Senator Patton called up from the table the following bill:

H. B. No. 486, A bill to be entitled "An Act to repeal Chapter 76, Special Laws of the First Called Session of the Fortieth Legislature of 1927, entitled Polk County Road Law, creating a more efficient road system for Polk County, Texas, and declaring an emergency."

The committee report carrying amendments was adopted.

The bill was read second time and passed to third reading.

On motion of Senator Patton, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 486, was put on its third reading and final passage, by the following vote:

Yeas—29.

Beck.	Hornsby.
Berkeley.	Loy.
Cousins.	Martin.
Cunningham.	Moore.
DeBerry.	Neal.
Gainer.	Oneal.
Greer.	Parr.
Hardin.	Parrish.
Hopkins.	Patton.

Poage.	Thomason.
Pollard.	Williamson.
Purl.	Woodruff.
Rawlings.	Woodul.
Russek.	Woodward.
Small.	

Absent-Excused.

Holbrook. Stevenson.

Read third time and finally passed by the following vote:

Yeas—29.

Beck.	Parr.
Berkeley.	Parrish.
Cousins.	Patton.
Cunningham.	Poage.
DeBerry.	Pollard.
Gainer.	Purl.
Greer.	Rawlings.
Hardin.	Russek.
Hopkins.	Small.
Hornsby.	Thomason.
Loy.	Williamson.
Martin.	Woodruff.
Moore.	Woodul.
Neal.	Woodward.
Oneal.	

Absent-Excused.

Holbrook. Stevenson.

Simple Resolution No. 81.

Senator Moore sent up the following resolution:

WHEREAS, At the recent annual session of the American Association of Teacher Colleges at Detroit, Michigan, the association honored Texas, her teacher college unit and one of her native sons by elevating Dr. Sam H. Whitley, president of the East Texas State Teachers College of Commerce, Texas, to the presidency, and

WHEREAS, We recognize the honor thus conferred upon the State, her educational institutions and one of her native sons, and

WHEREAS, We recognize in this connection that the American Association of Teachers Colleges as an organization, was also honored in elevating one of Texas' outstanding educators to the presidency; therefore, be it

RESOLVED, That we appreciate and recognize the significance of the honor thus conferred on Texas and her native son, Dr. Whitley; be it further

RESOLVED, That Dr. Whitley is now on the floor of the Senate, that he be invited to address the Senate and extended the privilege of the floor.

MOORE,
PARRISH.
HORNSBY.

Read and adopted.

Dr. Whitley Speaks.

The Chair appointed Senators Moore, Parrish, and Hornsby to escort Dr. Whitley to the platform.

The Chair introduced Senator Moore, who introduced Dr. Whitley. Dr. Whitley briefly addressed the Senate.

Adjournment.

On motion of Senator Moore, the Senate, at 4:24 o'clock, p. m., adjourned until 10 o'clock tomorrow morning.

APPENDIX.

Committee on Engrossed Bills.

Committee Room,

Austin, Texas, March 18, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 98 carefully examined and compared and find same correctly engrossed.

HARDIN, Chairman.

Committee Room,

Austin, Texas, March 18, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 222 carefully examined and compared and find same correctly engrossed.

HARDIN, Chairman.

Committee Room,

Austin, Texas, March 18, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 261 carefully examined and compared and find same correctly engrossed.

HARDIN, Chairman.

Committee Room,

Austin, Texas, March 18, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on En-

grossed Bills, have had S. J. R. No. 18 carefully examined and compared and find the same correctly engrossed.

HARDIN, Chairman.

Committee Reports.

Committee Room,

Austin, Texas, March 18, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Finance, to whom was referred

S. B. No. 17, A bill to be entitled "An Act making appropriations to pay salaries of judges, and the support and maintenance of the Judicial Department of the State Government for the two year period beginning September 1, 1931, and ending August 31, 1933, and declaring an emergency."

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendation that it do not pass, but that the Committee Substitute Bill for Senate Bill No. 17 do pass in lieu thereof and that the Substitute Bill be printed, and that the original bill be not printed.

BECK, Chairman.

Committee Room,

Austin, Texas, March 18, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Educational Affairs, to who was referred

S. B. No. 204. A bill to be entitled "An Act to amend Chapter 10, Acts of the 41st Legislature, Second Called Session, relating to the organization of the State Board of Education; providing for a vice-president of said Board of Education; providing for the appointment of the State Superintendent of Public Instruction by said Board of Education; repealing all laws in conflict herewith; and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass.

NEAL, Chairman.

Committee Room,

Austin, Texas, March 18, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on

Educational Affairs, to whom was referred

H. B. No. 470, A bill to be entitled "An Act authorizing county boards of school trustees, in certain counties of the State to employ rural school supervisors in lieu of holding teachers' institute; defining their duties and fixing their compensation."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass with the following committee amendments:

Amend the bill by striking out the population and inserting in lieu thereof "Tom Green County." Also amend the bill by striking out all of Section 5 and substituting in lieu thereof the following:

"Section 5. The salary of such rural school supervisor shall be fixed by the county board of school trustees, but such salary shall not exceed the sum required to pay all of the teachers of said county for attendance of one week of teachers' institute per year, and such salary shall be paid out of the available school funds of such county, prorating the same among the school districts of such county, exclusive of school districts having affiliated schools on the list of the State Department of Education, in proportion to the salaries paid the teachers of such districts."

NEAL, Chairman.

Committee Room,

Austin, Texas, March 18, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Educational Affairs, to whom was referred

H. B. No. 467, A bill to be entitled "An Act to fix the salary of the superintendent of public instruction in each county in Texas having a population of not less than 36,000 nor more than 36,100 according to the Federal census of 1930; providing for office assistants and salaries; providing for office expenses; repealing all laws in conflict herewith, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, with the following committee amendment:

Amend the bill by striking out wherever they appear in the caption and in the bill the figures and words "each county in Texas having a population of not less than 36,000 nor more than 36,100, according to the Federal census of 1930" and inserting in lieu thereof "Tom Green County."

NEAL, Chairman.

Committee Room,

Austin, Texas, March 17, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Criminal Jurisprudence, to whom was referred

H. B. No. 255, A bill to be entitled "An Act to amend Article 698 of the Code of Criminal Procedure of the State of Texas, providing that the proper judgment be entered on verdicts; providing that in misdemeanor cases where the verdict or plea is guilty and the punishment is by fine only, the court or judge may defer judgment; providing for the time and manner, deferring judgment; providing for recognizance or bail for the defendant; and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed in lieu of House printing.

SMALL, Chairman.

Committee Room,

Austin, Texas, March 18, 1931.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

S. B. No. 541, A bill to be entitled "An Act amending Article 6866 of the Revised Civil Statutes of 1925, relating to the oath and bond of sheriffs so as to provide that sheriffs and their deputies shall not be responsible on their official bonds because of having received or confined any prisoner delivered to them by a State ranger and declaring an emergency."

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

WOODWARD, Chairman.

Ruling by Supreme Court.

No. 1455-5690

Commission of Appeals Section A.
CITY OF FORT WORTH, TEXAS
RELATOR.

vs.

ROBERT LEE BOBBITT, ATTOR-
NEY GENERAL,
RESPONDENT.

ORIGINAL MANDAMUS

This is an original mandamus proceeding filed by the City of Fort Worth, Texas, a city duly and legally incorporated under and by virtue of the laws of the State of Texas, and operating as a home rule city, with a population of more than 5,000 inhabitants, and by certain officers of said city against the Attorney General of this State to compel the approval of certain "special improvement bonds or certificates" issued by the City of Ft. Worth under the provisions of c. 43, p. 82, General Laws, 4th Called Session 41st Legislature, 1930.

The Attorney General has declined to approve such bonds and contends that the Act attempting to authorize the issuance of same is unconstitutional and void for several reasons. We deem it only necessary to discuss one of such reasons.

The Attorney General contends that the Act in question is in contravention of Sec. 56 of Art. 3 of our State Constitution in that same seeks to regulate the affairs of a city and seeks to change the charter of an incorporated city by a local law.

The caption of the Act in question reads as follows:

"An Act providing that certain cities having the population requirements set forth herein may acquire and own special assessment certificates issued in connection with street improvements, that such cities may pledge and impound said certificates as the basis for the issuance of special improvement bonds subject to the limitations and provisions of this Act; providing for use of funds from the sale of such bonds; providing that such bonds shall not be reckoned in determining charter, constitutional or statutory bond limitations and shall not constitute indebtedness of the city contemplated under certain provisions of the Constitution;

prescribing Statutory duties imposed on such cities when such bonds are issued; providing for the examination and approval of such bonds by the Attorney General, and for their registration by the Comptroller; and declaring an emergency."

Section 1, of the Act in question reads as follows:

"Section 1. Cities in the State of Texas having not less than 106,000 inhabitants and not more than 110,000 inhabitants, according to the United States census of 1920, may proceed in accordance with the provisions thereof, independently of, and without reference, to any other applicable law or charter provision, present or future, which, however, shall remain in force as alternative (alternative) methods. The terms "city," "such city," "said city," and the plurals thereof, shall mean a city or cities included under the provisions of this Act."

Sec. 56 of Art. 3 of our State Constitution, so far as applicable to this case reads as follows:

Sec. 56. The Legislature shall not, except as otherwise provided in this constitution, pass any local or special law, authorizing:

"Regulating the affairs of counties, cities, towns, wards, or school districts."

"Incorporating cities, towns or villages or changing their charters."

It will be noted that Sec. 1 of the Act confines its application absolutely to cities which, according to the United States census of 1920, contain not less than 106,000 and not more than 110,000 inhabitants. An examination of the census referred to discloses that the City of Ft. Worth, Texas, is absolutely the only city in the State of Texas, that has a population coming within the provisions of this Act. Furthermore the Act is so constructed that it is absolutely impossible for any other city in the State to ever be included within the terms or under the provisions of the Act. It is, therefore, our opinion that this Act is confined in its application to the City of Ft. Worth only, just as clearly, and just as effectively, as if the stipulation with reference to population had been omitted, and the name "Ft. Worth" written therein in its stead.

The Constitution in plain and simple terms prohibits the enactment of any local or special law regulating

the affairs of cities or changing their charters. It cannot be denied that this law does have reference to regulating the affair of cities. If it is local or special law it is therefore unconstitutional and void.

We presume that no one would contend, if the name "Ft. Worth" had been inserted in the law in place of the stipulation with reference to population that the Act would be constitutional. If we should hold this law to be constitutional when it describes and confines its application absolutely to one city we would in effect be holding the constitutional provision under discussion an idle and a vain thing, and can be evaded by a subterfuge. We therefore hold that the act in question is unconstitutional and void. *Lewis' Sutherland Stst. Construction* (2nd. Ed.) p. 397 et seq. and notes. *Parker-Washington Co. v. Kansas City*, 85 Pac. 781 (Sup. Ct. Kan.); *Hibbard v. State*, 64 N. E. 109; (Sup. Ct. T. Ohio); *Gray v. Taylor*, 227 U. S. 51, 57 L. Ed. 413; 36 C. J. 96.

We quote the following from *Sutherland, supra*.

"A classification based upon existing or past conditions or facts, and which would exclude the persons, places, things, or objects thereafter coming into the same situation or condition, is special and void. Thus a classification of cities or counties based upon existing population or upon the population shown by specified census is of this character."

"The number of persons affected by a law does not control or determine the question of its validity: It is enough that the law relates to a subject of a general nature, and is general and uniform in its operation upon every person who is brought within the relation and circumstances provided for by it. A class of cities or counties, based upon population, may be valid, though it embraces but one city or county, if others may come into the class on attaining the specified population."

An Act which designates a particular city or county by name, or by a description so qualified that a particular city or county, is plainly intended, and that no other can reasonably be expected to have the distinguishing characteristics, and whose operation is limited to such city or county, is held to be local or special."

"An Act applicable to counties having a population of from 35,190 to 35,200 was held evasive and special." Citing *Hixon v. Burson*, 54 Ohio St. 470, 43 N. E. 1000; *Owen County Com'rs v. Shangler*, 159 Ind. 575; 65 N. E. 743."

In *Parker-Washington Co. v. Kansas City, Supra*, the Supreme Court of Kansas, in construing the provisions of the Constitution of that State in defining a "special Act," and "laws of a general nature," said:

"Section 1. of Article 12, of the Constitution provides that 'The Legislature shall pass special Act conferring corporated powers,' and Section 17 of Article 2 that 'all laws of a general nature shall have a uniform operation throughout the State.' Whether the Act in question is to be regarded as special, and whether its operation is uniform through the State depends upon whether it affords a fair basis for the classification of cities with reference to the matters to which it relates, and whether the result as accomplished is in fact a real classification upon that basis, and not a designation of a single city to which alone it shall apply, under the guise of such classification."

In *Hibbard v. State, supra*, a law of Ohio which provided for pensioning teachers in the public schools of a certain city in that state was attacked on the ground that it violated a provision of the Constitution of Ohio providing that all laws of a general nature should have a uniform application throughout the State. The law in question was so drawn that it was general in form, but only applied at the time it went into effect, to the City of Toledo, and could never after a certain date apply to any other city. The court condemned the law in the following language:

"It is argued that this might apply to any city that came into the class at any time thereafter: that the language of the Act might be so construed as to include such cities: and that the boards in such cities and the teachers might take action after they came into the class designated. But we do not so construe this Act. It is contrary to the plain language of the Act itself, which provides that such action shall be taken within a certain time after the Act goes into effect. The language

of the Act itself and its title seem to indicate that it was intended by the Legislature that it should apply to any city in the State but Toledo at that time of its passage and taking effect, but it could never apply in the future to any other city. The subject-matter of the Act is one of a general nature and in which all the people of the State are interested. It comes within both the language and the spirit of this provision of the Constitution."

In *Gray v. Taylor*, supra, the Supreme Court of the United States defined a local law as, "The phrase Local Law means primarily, a law that in effect, if not in form, is directed to a specific spot."

36 C. J. 690, supra, gives practically the same definition.

Of course, we do not mean to hold that an Act, general in its nature and terms, would be in contravention of the above constitutional provisions, merely because at the time of its passage it only affects one city; in fact we hold to the contrary. We think, however, that an Act which is so drawn that by its plain and explicit provisions it is made to apply to one city only in the State, and can never in any contingency apply to any other city, is just as repugnant to the constitutional provisions under discussion as though the name of the city to which the Act does apply had been written into the Act in the first instance. In other words, we think that a city can be designated by description just as effectively as it can be named.

To state our views in another form, we hold that a law that has uniform application throughout the State, to cities of a certain class, as to population, or other legitimate classification, is not repugnant to the constitutional provision under discussion even though there is only one city in the State of that class, but when the law is so drawn that it applies to one city, and can never apply to any but this one city in any possible event, the law is unconstitutional and void, because such a law is not based on classification, but on isolation. *Cooley's Constitutional Limitations*, 8th Ed. Notes, Vol. 1, page 262-3.

Since the Act is unconstitutional for the reasons stated, there is no lawful authority for the issuance of the bonds which the City of Ft.

Worth here seeks to have the Attorney General approve. The mandamus should, therefore, be refused and we so recommend.

FORTY-SIXTH DAY.

Senate Chamber,
Austin, Texas,
March 19, 1931.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Lieutenant Governor Edgar E. Witt.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Parrish.
Berkeley.	Patton.
Cousins.	Poage.
Cunningham.	Pollard.
DeBerry.	Purl.
Gainer.	Rawlings.
Greer.	Russek.
Hardin.	Small.
Hopkins.	Stevenson.
Hornsby.	Thomason.
Loy.	Williamson.
Martin.	Woodruff.
Moore.	Woodul.
Neal.	Woodward.
Oneal.	

Absent-Excused.

Holbrook.	Parr.
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Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

Petitions and Memorials.

(See Appendix.)

Committee Reports.

(See Appendix.)

Bills and Resolutions.

By an affirmative vote of four-fifths of the membership of the Senate, the constitutional rule relating to the introduction of bills during the last 90 days of the session was suspended and consent was granted to introduce the following bill: